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05 UNITED STATES DISTRICT COURT  
06 WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

07 RICHARD LESLIE HATFIELD, ) CASE NO. C07-0296-JCC  
08 Plaintiff, )  
09 v. ) REPORT AND RECOMMENDATION  
10 MANFRED STUMPF, et al., )  
11 Defendants. )  
12

13 Plaintiff, a Washington state prisoner, is proceeding *pro se* and *in forma pauperis* in this  
14 action pursuant to 42 U.S.C. § 1983. Plaintiff alleges in his amended complaint that he injured his  
15 ankle when he slipped while working in the kitchen at the Twin Rivers Correctional Center in  
16 Monroe, Washington. (Dkt. #10 at 4). Plaintiff further alleges that his injury was wrongly  
17 diagnosed as a sprain instead of a break and that it took medical staff six weeks to identify his  
18 injury as a fracture. (*Id.*) Plaintiff seeks damages from various prison officials and medical staff  
19 whose conduct, he argues, violated his constitutional rights.

20 On March 6, 2007, the court, upon screening plaintiff's complaint, granted him leave to  
21 amend the complaint to correct certain deficiencies. (Dkt. #6). Specifically, the court pointed out  
22 that "[a]lthough mere negligence may support a state tort claim, it is not actionable under section

1983.” (*Id.* at 2, citing *Daniels v. Williams*, 474 U.S. 327, 333 (1986)). The allegations in plaintiff’s first complaint merely stated a cause of action for negligence. See *Jackson v. Arizona*, 885 F.2d 639, 641 (9th Cir. 1989) (holding that slippery floors, without more, do “not state even an arguable claim for cruel and unusual punishment”), *superseded by statute as stated in, Lopez v. Smith*, 203 F.3d 1122, 1130-31 (9th Cir. 2000). To file a complaint based upon a violation of his constitutional rights, plaintiff is required to meet a higher standard than negligence. To pursue his claim here, he must show that prison officials were deliberately indifferent to his safety by consciously disregarding an excessive risk of harm to his health. See *Farmer v. Brennan*, 511 U.S. 825, 833-38 (1994); *see also Wilson v. Seiter*, 501 U.S. 294, 302 (1991) (“[O]ur cases say that the offending conduct must be *wanton*.”) (Emphasis in original).

On April 18, 2007, after receiving an extension of time, plaintiff filed his amended complaint. (Dkt. #10). Upon examining the amended complaint, the court concludes that it suffers from the same deficiency as the original. Although the amended complaint asserts that defendants acted with “deliberate indifference” towards plaintiff’s safety, the facts alleged, even if true, do not establish this level of culpability. Unlike the plaintiff in *Frost v. Agnos*, 152 F.3d 1124, 1129 (9th Cir. 1998), plaintiff here does not allege that he is disabled nor that he suffered repeated injuries by slipping and falling in the kitchen. The closest that plaintiff comes to alleging deliberate indifference is his vague assertion that one of the defendants once slipped on the floor himself and, presumably, was thereby alerted to the dangerous condition that harmed plaintiff. (Dkt. #10 at 7). However, one accident in a prison kitchen does not show that prison officials unreasonably ignored an excessive risk or acted in a wanton manner. See, e.g., *LeMaire v. Maass*, 12 F.3d 1444, 1457 (9th Cir. 1993) (shackling a dangerous inmate in shower, even if he might fall,

01 does not violate the Eighth Amendment); *Tunstall v. Rowe*, 478 F. Supp. 87 (N.D. Ill. 1979)  
02 (greasy staircase that caused prisoner to slip and fall did not violate the Eighth Amendment);  
03 *Robinson v. Cuyler*, 511 F. Supp. 161, 163 (E.D. Pa. 1981) (slippery kitchen floor does not inflict  
04 cruel and unusual punishment); *Snyder v. Blankenship*, 473 F. Supp. 1208, 1212 (W.D. Va. 1979)  
05 (leaking dishwasher which caused prisoner to slip and fall did not violate Eighth Amendment).

06 The other allegations in plaintiff's amended complaint merely restate his previous  
07 allegations regarding the medical treatment that he received for his ankle injury. As stated in the  
08 court's previous Order granting him leave to amend, plaintiff's medical claim is essentially a claim  
09 of negligence and does not state a constitutional violation. While plaintiff may be able to seek a  
10 remedy in state court, negligence is not actionable under § 1983 in federal court. *See Farmer*, 511  
11 U.S. at 835.

12 Accordingly, the court recommends that plaintiff's amended complaint and this action be  
13 dismissed, without prejudice, under 28 U.S.C. § 1915(e)(2)(B)(ii) for failure to state a claim upon  
14 which relief can be granted. A proposed Order accompanies this recommendation.<sup>1</sup>

15 DATED this 24th day of April, 2007.

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17 Mary Alice Theiler  
18 United States Magistrate Judge  
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21 <sup>1</sup> Plaintiff has also filed a motion for a temporary restraining order, barring defendants from  
22 transferring him in retaliation for filing this lawsuit. (Dkt. #11). Although plaintiff has offered no  
evidence that prison officials are considering transferring him, the court need not reach the merits  
of the motion as it may be denied as moot once this action is dismissed.